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March 26, 2003

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TWB-204
Washington, DC 20554

Re: WC Docket No. 03-16, Application by SBC Communications Inc.,
Michigan Bell Telephone Company, and Southwestern Bell
Communications Services, Inc. for Provision of In-Region, InterLATA
Services in Michigan -- **Ex Parte Filing**

Dear Ms. Dortch:

AT&T respectfully submits this ex parte letter and accompanying declaration¹ in response to requests from the Commission Staff for additional information on certain issues related to the accuracy and reliability of SBC's data-gathering and reporting under its performance measurement obligations, and to respond to SBC's reply and ex parte submissions.²

1. Anti-Competitive Effects of Inaccurate Performance Data: Inaccuracies in SBC's performance measurement data have a major competitive impact. This Commission has consistently held that the performance data on which an applicant relies for Section 271 approval must be accurate, complete and reliable.³ The Commission's emphasis on accurate performance data is appropriate for several reasons.

¹ See Joint Supplemental Declaration of Karen W. Moore and Timothy M. Connolly, attached hereto.

² See SBC's Reply Affidavit of James D. Ehr; SBC's Joint Reply Affidavit of Mark J. Cottrell and Beth Lawson; see also three Ex Parte Letters from Geoffrey M. Klineberg to Marlene H. Dortch, dated March 14, 17, and 20, 2003.

³ See Moore/Connolly Supp. Decl. at ¶¶ 13-16 & nn. 1-5 (providing citations to Commission Orders).

First, inaccurate performance data greatly increases a competitor's costs of ensuring that it is receiving non-discriminatory access to a BOC's OSS. A competitor may experience a BOC's provision of access to OSS as deficient in certain respects, but in the absence of accurate performance data, a competitor must undertake costly and time-consuming efforts to reconcile its performance data with the BOC's data. Imposing such costs improperly shifts the burden to competitors to prove that the BOC has not fully implemented its duty of nondiscrimination, which conflicts with the burden of proof that Section 271 places on the BOC, and which preserves a significant barrier to effective competition.

Second, inaccuracies in performance results doom to failure the ostensibly self-executing enforcement mechanisms in a performance remedy plan. Such plans are intended to discourage BOCs from "backsliding" once section 271 authorization is granted, and to enable state and federal regulators to respond swiftly if they do. If the BOC's performance data are not accurate, this critical tool for monitoring post-authorization compliance with the Act becomes ineffectual. Moore/Connolly Supp. Decl. ¶ 16.

Third, competitors depend upon accurate performance reporting quickly to identify performance defects that either the competitor or the BOC needs to take steps to remedy, and to determine if those steps have in fact remedied the problem. In the absence of reliable and accurate performance reports from the BOC, such improvements can occur only through the costly and time-consuming reconciliation of BOC and CLEC data, which serves neither parties' interest. AT&T's recent experience with SBC's misuse of the jeopardy notice process further illustrates how SBC's inaccurate performance reporting can impede AT&T's ability promptly to fix problems with orders and improve customer service. Moore/Connolly Supp. Decl. ¶¶ 17-19.⁴

2. SBC's Reports And Restatements of LLN Performance: SBC errs in relying upon existing reports under PM MI 13 and its newly created LLN data restatements to buttress its claims of exemplary performance in generating timely and accurate Line Loss Notifications ("LLNs").⁵ SBC has yet to demonstrate that it has accurately reported its LLN data, and the evidence shows that the data are unreliable. Even if accepted at face value, however, these data demonstrate that SBC makes errors in at least 10 percent of LLNs, an exceptionally high rate that confirms that SBC's LLN performance is discriminatory.

AT&T previously showed that SBC's reported data for PM 13 are unreliable because SBC arbitrarily fails to report its line loss performance for all transactions involving SBC "win-

⁴ A recent consent decree between the Commission and SBC concerning its failure to maintain accurate performance data as required by the SBC-Ameritech merger conditions underscores the seriousness of this issue. See Consent Decree DA03-825 (Mar. 20, 2003).

⁵ SBC also errs in relying on other performance reports. See, e.g., Moore/Connolly Supp. Decl. ¶¶ 54-56 (PM 17 does not accurately report SBC's performance in generating wholesale bills because results do not capture the problems relating to SBC's ACIS to CABS conversion; *id.* at ¶¶ 57-60 (PM 4 inaccurately portrays pre-ordering because data reflects subjective judgments and other deficiencies).

backs” of a CLEC’s customer, which represent the lion’s share of all customer losses for AT&T. E.g., Moore/Connolly Supp. Decl. ¶ 21. For this reason alone, SBC’s reported results for PM MI 13 are grossly incomplete and hence unreliable. SBC’s responses only exacerbate this problem.

First, SBC has misled this Commission by asserting on reply that in the recent “second six-month review,” the parties addressed the issue of excluding winbacks from PM MI 13. To the contrary, this issue was never discussed at the six-month review, and SBC then admitted in subsequent state proceedings that the documented business rule for the new PM MI 13 would continue to allow exclusion of winbacks. SBC recently has proposed changes to the business rules to include winbacks. Moore/Connolly Supp. Decl. ¶¶ 22-27.

Second, SBC is not yet prepared to report its data consistently with these new rules. SBC has admitted that it has “not completed at this time” the key “documents,” known as Data Flow Diagrams (“DFDs”) and Data Element Maps (“DEMs”), that BearingPoint has repeatedly stressed – and SBC has elsewhere agreed – are essential to generating accurate performance reports. DFDs and DEMs are like blueprints; to implement a set of business rules without them is like building a house without architectural plans. For this reason, BearingPoint has long faulted – and continues to fault – SBC for failing to establish accurate DFDs and DEMs for many of its performance measures, including PM MI 13. Indeed, SBC agreed, in connection with its effort to resolve BearingPoint Exception 19 (inadequate data retention) and Exception 20 (inadequate data controls) to implement DFDs and DEMs for each performance measure. SBC’s decision to implement the new PM MI 13.1 without having completed the requisite DFDs and DEMs for either PM MI 13 or PM MI 13.1 is astonishing and troubling evidence that SBC has yet to implement reliable processes for accurately reporting its LLN performance. Moore/Connolly Supp. Decl. ¶¶ 27-34.

Third, the Commission should accord no weight to SBC’s tardy submission, in ex parte letters and attachments,⁶ of four summaries (or “Tables”) of restated LLN data. For the reasons discussed above, SBC has yet to establish that it reliably and accurately gathers and reports LLN data according to existing business rules. Its “restated” LLN data are even less reliable, for whatever “rules” governed the gathering of those data are unknown and undisclosed.

Even apart from their inherent lack of foundation, SBC’s new Tables of restated LLN data are confusing, internally inconsistent, and incomplete. SBC provides no basis for determining, for example, whether Table 1 includes all incomplete, inaccurate, and untimely LLNs. Moore/Connolly Supp. Decl. ¶¶ 36-40. SBC’s limited explanations only add to the confusion. For example, SBC’s claim that Table 1 includes all LLNs that “were reported in PM MI 13 or would be reported in the new PM MI 13” is baffling, because the two measures are governed by different business rules, with different intervals for timeliness and different benchmarks. *Id.* ¶ 41.

⁶ See SBC March 14 Ex Parte Letter Att. A, ¶¶ 13-14, 24 ; SBC March 20 Ex Parte Letter, Att.

Table 2 also contains fundamental flaws. It purports to restate SBC's LLN performance if winbacks were included, but bases its calculation on the new business rules (due to be implemented in April 2003) rather than the business rules in place when SBC reported the LLN data that is at issue in this application. For this reason alone, Table 2 provides no useful information about SBC's LLN performance during the relevant period if winbacks are included. Moore/Connolly Supp. Decl. ¶ 42.

The reliability of Table 2 (and the other LLN Tables) is further undermined by SBC's failure to demonstrate that SBC has accounted for the problems with its data that AT&T uncovered during data reconciliation. Specifically, it is unclear whether SBC's Tables capture the ten percent of AT&T's missing LLNs that involved CLEC-to-CLEC (rather than SBC) winbacks. It is also unclear whether SBC has corrected the stark errors in its raw data, such as indications that AT&T had lost customers to a carrier called "Wallace" before AT&T had entered the market, or that AT&T had lost customers to data carriers that do not provide voice service. Moore/Connolly Supp. Decl. ¶¶ 43-45.

SBC's Table 3, which purportedly extends the restatement to September and October, 2002, raises another inconsistency that further undermines the credibility of SBC's data. In connection with Table 3, SBC now states that "a total of more than 20,000 LLNs were impacted by" only one "outage" that occurred in September 2002.⁷ Yet SBC's witnesses previously testified that the problems that AT&T, WorldCom, and Z-Tel collectively reported for the six-month period between August 2002 through January 2003 affected only 13,250 LLNs, and SBC calculated a "1.9 percent" error rate on that basis. This inconsistency raises suspicion, at the very least, that SBC's reliance on selected CLEC reports to calculate its performance is misleading and unreliable. Moore/Connolly Supp. Decl. ¶ 46.

SBC's further assertion that 96.7 percent of its LLNs were "successfully delivered" raises more questions than it answers. SBC nowhere define what it means by "successfully delivered," let alone provide any summary report of its performance. And its concession that LLNs provided to ASI were inadvertently included in Table I raises more questions about the accuracy of its asserted 96.7 percent success rate. Moore/Connolly Supp. Decl. ¶ 50.

Finally, and most tellingly, SBC's restated data – even if accepted as accurate – actually confirm that SBC's LLN performance is discriminatory and that SBC has grossly misrepresented the extent of LLN errors. Specifically, SBC's latest restated data refutes SBC's assertion, in reply, that SBC's LLN problems are insignificant because they affect only 1.9 percent of LLNs sent. As noted above, SBC based the "1.9 percent" calculation on the reports of three CLECs of LLN failures involving 13,250 LLNs between August 2002 and January 2003.⁸

⁷ See SBC March 20 Ex Parte Att. at p. 2 n. 4.

⁸ See Cottrell/Lawson Joint Reply Aff. ¶ 96.

SBC's restated data, however, show that SBC's LLN problems actually affected not 1.9 percent but *at least 9.9 percent* of all CLEC LLNs. SBC obscures this fact by separately reporting the *untimely* LLNs in Table 3 while reporting the *inaccurate* LLNs in Table 4. This is misleading, because LLNs must be both timely and accurate to serve their purpose. Taken together, SBC provided 49,093 untimely LLNs and 9,430 inaccurate LLNs, for a total of 58,539 erroneous LLNs (out of a total of 593,380).⁹ SBC's admitted failure to provide LLNs that were both accurate and timely at least 9.9 percent of the time – through errors that affected all CLECs over at least a five month period – far exceeds the 2.3 percent error rate that the Commission assumed BellSouth had briefly imposed on one carrier in the *Georgia/Louisiana 271 Order* (see *id.* ¶ 163), or the less than one percent error that the Commission attributed to Verizon in the *Pennsylvania 271 Order* (see *id.* ¶ 52 & n.211).

For all these reasons, SBC's tardy, inconsistent, unclear, unsupported, and unverifiable restatements of its flawed LLN data should be accorded no weight. SBC's unprecedented level of LLN errors denies CLECs nondiscriminatory access to OSS. SBC's 271 application should be denied, and SBC should not reapply before it has demonstrated over time that it is providing LLNs on an accurate and timely basis.

3. BearingPoint's Audit Confirms That SBC's Data Are Inaccurate

SBC's efforts to rely on its performance data are untenable for another fundamental reason. The Michigan PSC commissioned BearingPoint to audit the accuracy and reliability of SBC's reported data, and BearingPoint's reports reveal substantial deficiencies in SBC's processes for performance monitoring and reporting. BearingPoint's most recent report confirms that SBC's self-reported data ought not be given any weight.

Although SBC claims that it has made progress since BearingPoint's dismal assessment of SBC's processes in October, 2002, SBC still falls far short of demonstrating that its performance reporting is accurate and reliable. In its report of March 7, 2003, BearingPoint found that SBC had passed only approximately 27.5 percent of the total test criteria and had failed approximately 31 percent, with its performance on the remaining criteria are indeterminate. This report confirms that SBC's performance monitoring and reporting processes remains riddled with deficiencies. Moore/Connolly Supp. Decl. ¶¶ 61-63.

⁹ SBC further obscures the reality of its reported numbers by failing on Table 3 either to give 5 month totals of the data it reports or to show the total number of untimely LLNs on Table 3. But these figures are easily derived. AT&T derives the figure of 49,093 untimely line losses by subtracting the total number of timely mechanized LLNs sent for September 2002 through January 2003 ((which is 516,937 – see Table 3, col. 2) from the total number of Mechanized Line Losses for that same period (which is 566,030 – see Table 3, col. 3). To this AT&T adds 9,439, which is the Total Inaccurate LLNs (see Table 4) for this same period. The sum is 58,532 erroneous LLNs, which in turn represents 9.9 percent of the 5 month total of "CLEC Losses" of 593,380, which is shown in Table 4.

For example, BearingPoint reports that SBC failed 10 of 18 criteria in the PMR1-6 test, which is designed to evaluate whether data are retained in accordance with regulatory requirements. These “Not Satisfied” findings are based upon Exception 186 in which BearingPoint found that SBC failed to “demonstrate that certain system[s] of record and reporting system historical data were retained in compliance with requirements.”¹⁰ Indeed, in area after area, affecting pre-ordering, ordering, provisioning, maintenance and repair, and billing, BearingPoint found that SBC failed to retain data consistently with regulatory requirements. Such defects are particularly serious because gaps in data retention defeat the efforts of CLECs and regulators to engage in data reconciliation and definitively resolve disputes over SBC’s performance.¹¹

Equally important is BearingPoint’s decision recently to open Exception 188. BearingPoint found that SBC’s technical documentation – including its DFDs and DEMs – are deficient for 42 performance measurements, including the current PM MI 13. BearingPoint also recently opened Exception 187, finding that SBC’s calculation logic is incomplete or inaccurate for many measures, including PM MI 13. In light of these recently opened exceptions, SBC’s startling admission that will not complete DFDs and DEMs for the new PMs MI 13 and MI 13.1 before their implementation underscores the continued lack of controls in and the inherent unreliability of SBC’s performance monitoring and reporting processes, as well as SBC’s lack of commitment to accuracy in performance reporting. Moore/Connolly Supp. Decl. ¶¶ 30-31.

In a recently submitted Rebuttal Affidavit, the Staff of the Illinois Commerce Commission (“ICC”) once again has repudiated SBC’s arguments that its data are reliable. Based upon the same evidence that SBC has presented here, the ICC Staff has reaffirmed that SBC cannot reasonably rely on its performance data for Section 271 approval. Moore/Connolly Supp. Decl. ¶¶ 129-37. That assessment is equally applicable here.

4. The Ernst & Young Audit Is Fundamentally Flawed

SBC now claims that the Commission should ignore the results of the PMR4 and PMR5 tests in the BearingPoint Audit and defer instead to the audit results of SBC’s financial auditor, Ernst & Young, because E&Y used the same testing methodology in Michigan as in Missouri. That argument has no merit.

First, in the Missouri 271 proceeding, the E&Y audit was the only state-specific PMR test conducted under the auspices of the Missouri PSC. Here, by contrast, the Michigan PSC commissioned BearingPoint to conduct an independent and comprehensive audit of the type used often before to evaluate numerous BOCs in other regions, with a scope and rigor that far exceeds

¹⁰ Moore/Connolly Supp. Decl. ¶ 74 (quoting BearingPoint March 7 Report at 9).

¹¹ *Id.* ¶¶ 74-85; *see also id.* ¶¶ 65-73 (SBC still fails PMR1 by not accurately documenting how data flows through, and is captured by, its systems); *id.* ¶¶ 86-109 (SBC still fails PMR3 (change management), PMR4 (data integrity), and PMR5 (metrics replication)).

the assignment that SBC gave E&Y. Thus the Commission faces a question here that it did not face in Missouri: whether to place weight upon a company-sponsored audit rather than upon the far more rigorous, comprehensive, and independent audit ordered by the state commission.

Second, the assumptions and limitations of E&Y's methodology preclude the Commission from choosing rationally to rely upon it rather than upon the BearingPoint results. AT&T has previously shown that the E&Y audit is procedurally and substantively flawed for many reasons. *See, e.g.*, Moore/Connolly Supp. Decl. ¶ 110. One significant reason is E&Y's failure to conduct a comprehensive evaluation of SBC's raw data to determine whether SBC's reported results are accurate.

On the issue of raw data, SBC's E&Y witnesses assert that E&Y performed adequate tests of the underlying data. In reality, however, their testimony reveals that E&Y never performed a rigorous evaluation of the raw data used in performance measurement reporting, or the manner in which SBC filters processed data (derived from raw data) for performance measurement reporting. During its test, E&Y did not follow the paths of the raw data through SBC's systems to ensure the reliability of SBC's reported results. In addition, E&Y did not generate its own transactions that could have been used as a control point for testing pre-ordering, ordering, provisioning, repair, and billing. Instead, E&Y simply relied on samples of data obtained from production data files. Furthermore, during its data integrity testing, E&Y failed to examine electronic pre-ordering and ordering data at their point of entry into SBC's systems. Rather, as E&Y has testified, E&Y examined SBC's data after they had been translated from the CLEC interface format (EDI) into the SBC internal system "language" by the SBC translation system. Moore/Connolly Supp. Decl. ¶¶ 112-15.

These are serious defects. As E&Y has conceded, its procedures for examining raw data would have overlooked the "lost order" problem experienced by CLECs in New York shortly after Bell Atlantic-New York ("Bell Atlantic") won 271 authorization there. Because E&Y reviewed SBC's data only *after* they passed through the EDI translator, E&Y could not have detected whether transactions had been lost (as in New York) before they were handed off to the source system. Moore/Connolly Supp. Decl. ¶¶ 116-17.

The shoddiness of the E&Y testing procedures contrasts sharply with the checks and safeguards used in the BearingPoint audit. BearingPoint examines and compares SBC's raw data (i.e. unprocessed data) against SBC's processed data and tracks SBC's raw data through SBC systems with adequate (and documented) controls to assure the accuracy and reliability of reported results. Moore/Connolly Supp. Decl. ¶ 118.

SBC's March 17 *ex parte* concerning the nature and scope of retesting conducted by E&Y further highlights the deficiencies in E&Y's testing methodology. E&Y's "retesting" consisted merely of checking to determine if modifying the computer code corrected the problem identified. SBC concedes that "E&Y did not perform 'regression testing,' meaning an analysis on the corrective action to determine if unintended consequences with respect to other data not

mishandled by the original computer program code occurred.” Thus, SBC has admitted that E&Y did not conduct the type of testing that would have determined “whether the correction, as implemented, had [or did not create] unintended consequences with respect to other data.” Moore/Connolly Supp. Decl. ¶¶ 120-23.

The inadequacy of E&Y’s testing procedures is further underscored by the numerous instances, involving dozens of performance measurements, of discrepancies identified by BearingPoint—many of them identified *after* the E&Y Audit Report was published. Six of these observations are unresolved as of March 18. These discrepancies demolish any claim that E&Y’s audit involved a comprehensive evaluation of SBC’s raw data through SBC’s systems to assure accuracy in reported results. Moore/Connolly Supp. Decl. ¶ 119.

5. SBC Obstructs Access to Raw Data and Data Reconciliation: SBC claims that it has provided AT&T and other CLECs with access to its raw data and is committed to reconciling data with CLECs. SBC should begin by reconciling these unsupported claims with the facts. As the attached declaration sets forth in detail, SBC has repeatedly failed to provide raw data in a timely manner and has yet to provide CLECs with electronic access to raw data comparable to that SBC which provides in its Pacific and SWBT regions. This foot-dragging, together with SBC’s stubborn lack of cooperation in providing essential attributes of raw data (such as full disposition codes), have impeded AT&T’s efforts at data reconciliation and compounded the competitive harm of SBC’s inaccurate performance data. SBC’s conduct thus belies SBC’s professed commitment to data reconciliation. Moore/Connolly Supp. Decl. ¶¶ 138-64.

For these and other reasons that AT&T has previously set forth, SBC has not shown that its performance data is accurate, complete, and reliable. Its Michigan 271 application should be denied on this basis alone.

Very truly yours,

/s/ R. Merinda Wilson

R. Merinda Wilson

Counsel for AT&T Corp.